

and other independent undertakings, the bank's obligation to honor depends upon the presentation of specified documents and not upon nondocumentary conditions or resolution of questions of fact or law at issue between the applicant and the beneficiary. A national bank may also confirm or otherwise undertake to honor or purchase specified documents upon their presentation under another person's independent undertaking within the scope of such laws or rules.

(b) *Safety and soundness considerations*—(1) *Terms*. As a matter of safe and sound banking practice, banks that issue independent undertakings should not be exposed to undue risk. At a minimum, banks should consider the following:

(i) The independent character of the undertaking should be apparent from its terms (such as terms that subject it to laws or rules providing for its independent character);

(ii) The undertaking should be limited in amount;

(iii) The undertaking should:

(A) Be limited in duration; or

(B) Permit the bank to terminate the undertaking either on a periodic basis (consistent with the bank's ability to make any necessary credit assessments) or at will upon either notice or payment to the beneficiary; or

(C) Entitle the bank to cash collateral from the applicant on demand (with a right to accelerate the applicant's obligations, as appropriate); and

(iv) The bank either should be fully collateralized or have a post-honor right of reimbursement from the applicant or from another issuer of an independent undertaking. Alternatively, if the bank's undertaking is to purchase documents of title, securities, or other valuable documents, the bank should obtain a first priority right to realize

on the documents if the bank is not otherwise to be reimbursed.

(2) *Additional considerations in special circumstances*. Certain undertakings require particular protections against credit, operational, and market risk:

(i) In the event that the undertaking is to honor by delivery of an item of value other than money, the bank should ensure that market fluctuations that affect the value of the item will not cause the bank to assume undue market risk;

(ii) In the event that the undertaking provides for automatic renewal, the terms for renewal should be consistent with the bank's ability to make any necessary credit assessments prior to renewal;

(iii) In the event that a bank issues an undertaking for its own account, the underlying transaction for which it is issued must be within the bank's authority and comply with any safety and soundness requirements applicable to that transaction.

(3) *Operational expertise*. The bank should possess operational expertise that is commensurate with the sophistication of its independent undertaking activities.

(4) *Documentation*. The bank must accurately reflect the bank's undertakings in its records, including any acceptance or deferred payment or other absolute obligation arising out of its contingent undertaking.

(c) *Coverage*. An independent undertaking within the meaning of this section is not subject to the provisions of §7.1017.

[61 FR 4862, Feb. 9, 1996, as amended at 64 FR 60099, Nov. 4, 1999; 68 FR 70131, Dec. 17, 2003]

§7.1017 National bank as guarantor or surety on indemnity bond.

A national bank may lend its credit, bind itself as a surety to indemnify another, or otherwise become a guarantor (including, pursuant to 12 CFR 28.4, guaranteeing the deposits and other liabilities of its Edge corporations and Agreement corporations and of its corporate instrumentalities in foreign countries), if:

(a) The bank has a substantial interest in the performance of the transaction involved (for example, a bank, as fiduciary, has a sufficient interest in

Stand-by Letters of Credit (adopted by the U.N. General Assembly in 1995 and signed by the U.S. in 1997) (available from the U.N. Commission on International Trade Law, 212/963-5353); and the Uniform Rules for Bank-to-Bank Reimbursements Under Documentary Credits (ICC Publication No. 525) (available from ICC Publishing, Inc., 212/206-1150; <http://www.iccwbo.org>); as any of the foregoing may be amended from time to time.

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the faithful performance by a cofiduciary of its duties to act as surety on the bond of such cofiduciary); or

(b) The transaction is for the benefit of a customer and the bank obtains from the customer a segregated deposit that is sufficient in amount to cover the bank's total potential liability. A segregated deposit under this section includes collateral:

(1) In which the bank has perfected its security interest (for example, if the collateral is a printed security, the bank must have obtained physical control of the security, and, if the collateral is a book entry security, the bank must have properly recorded its security interest); and

(2) That has a market value, at the close of each business day, equal to the bank's total potential liability and is composed of:

- (i) Cash;
- (ii) Obligations of the United States or its agencies;
- (iii) Obligations fully guaranteed by the United States or its agencies as to principal and interest; or
- (iv) Notes, drafts, or bills of exchange or bankers' acceptances that are eligible for rediscount or purchase by a Federal Reserve Bank; or

(3) That has a market value, at the close of each business day, equal to 110 percent of the bank's total potential liability and is composed of obligations of a State or political subdivision of a State.

[61 FR 4862, Feb. 9, 1996, as amended at 64 FR 60099, Nov. 4, 1999]

§ 7.1018 Automatic payment plan account.

A national bank may, for the benefit and convenience of its savings depositors, adopt an automatic payment plan under which a savings account will earn dividends at the current rate paid on regular savings accounts. The depositor, upon reaching a previously designated age, receives his or her accumulated savings and earned interest in installments of equal amounts over a specified period.

§ 7.1020 Purchase of open accounts.

(a) *General.* The purchase of open accounts is a part of the business of

banking and within the power of a national bank.

(b) *Export transactions.* A national bank may purchase open accounts in connection with export transactions; the accounts should be protected by insurance such as that provided by the Foreign Credit Insurance Association and the Export-Import Bank.

§ 7.1021 National bank participation in financial literacy programs.

A national bank may participate in a financial literacy program on the premises of, or at a facility used by, a school. The school premises or facility will not be considered a branch of the bank if:

(a) The bank does not establish and operate the school premises or facility on which the financial literacy program is conducted; and

(b) The principal purpose of the financial literacy program is educational. For example, a program is educational if it is designed to teach students the principles of personal economics or the benefits of saving for the future, and is not designed for the purpose of profit-making.

[66 FR 34791, July 2, 2001]

Subpart B—Corporate Practices

§ 7.2000 Corporate governance procedures.

(a) *General.* A national bank proposing to engage in a corporate governance procedure shall comply with applicable Federal banking statutes and regulations, and safe and sound banking practices.

(b) *Other sources of guidance.* To the extent not inconsistent with applicable Federal banking statutes or regulations, or bank safety and soundness, a national bank may elect to follow the corporate governance procedures of the law of the state in which the main office of the bank is located, the law of the state in which the holding company of the bank is incorporated, the Delaware General Corporation Law, Del. Code Ann. tit. 8 (1991, as amended 1994, and as amended thereafter), or the Model Business Corporation Act (1984, as amended 1994, and as amended thereafter). A national bank shall designate in its bylaws the body of law selected